

The parties and their attorneys are hereby **ORDERED TO APPEAR** before the undersigned at the United States Courthouse, 320 Sixth Street, Sioux City, Iowa, for a settlement conference on *, 2001, at * a.m./p.m. The attorneys for the parties are responsible for timely advising any involved nonparty insurance company of the requirements of this order.

The persons attending the settlement conference must make certain their travel schedules are sufficiently flexible to permit them to remain at and personally participate in the settlement conference until **as late as * a.m./p.m.**, if necessary. No participant in the settlement conference will be permitted to leave the settlement conference before it is concluded without the permission of the settlement conference judge.

The settlement conference will be held in accordance with Local Rule 16.3 and under the following terms and conditions.

1. **PRIOR SETTLEMENT NEGOTIATIONS REQUIRED.** The settlement conference should not be used as a vehicle to facilitate *the commencement* of settlement negotiations. By **not later than three court days before the date of the settlement conference**, the parties must have exchanged **at least two written settlement demands and two written settlement offers**.

2. **INDIVIDUALS WITH FULL AUTHORITY.** All parties must attend the settlement conference in person, except that an individual with complete authority to negotiate and consummate a settlement on behalf of a party may appear for that party. An attorney who has appeared in this lawsuit for a party is not permitted to serve as the sole representative of that party at the settlement conference, even if the attorney otherwise has the required authority.

If a defendant does not personally appear at the settlement conference, the representative appearing for the defendant must have settlement authority, to be employed at the representative's discretion, to commit the defendant to pay an amount significantly more than the defendant's last offer. An insurance company that is or may be required contractually to defend or pay damages on behalf of a party to this action must have a representative present

at the settlement conference with settlement authority, to be employed at the representative's discretion, to commit the insurance company to pay an amount within the policy limits or up to 75% of the plaintiff's last demand, whichever is lower. In appropriate cases, the representative of a defendant or an insurance company may make an *ex parte* contact with the settlement conference judge (at 712-233-3868) to request a waiver of the requirements of this paragraph.

If a plaintiff does not personally appear at the settlement conference, the representative appearing for the plaintiff must have settlement authority, to be employed at the representative's discretion, to accept on behalf of the plaintiff an amount significantly less than the plaintiff's last demand.

Although a representative appearing for a party at the settlement conference must have the authority required by this order, there is no requirement that the representative agree to settle the case at the settlement conference for any particular amount or on any particular terms.

3. **CONFIDENTIAL SETTLEMENT STATEMENTS.** Not later than **two court days** before the settlement conference, the parties must submit to the settlement conference judge (but not file) a confidential written settlement statement setting forth the following: (a) the relevant positions of the parties concerning factual issues, issues of law, and damages; (b) the settlement negotiation history of the case, including a recitation of the specific demands and offers that have been conveyed; and (c) the names and positions of the individuals who will be attending the settlement conference. The statement ordinarily should not exceed **five pages** in length. The statement will not be made a part of the case file or shared with any other party, and will be destroyed following the settlement conference.

4. **PRESENTATIONS AT SETTLEMENT CONFERENCE.** The attorneys shall be prepared to give, if requested by the settlement conference judge, a brief presentation (**ten minutes or less**), similar to an opening statement, outlining the factual and legal strengths of

their case. The parties also may be permitted, if they wish, to make brief statements. The settlement conference judge then will hold separate, confidential caucuses with each party.

5. **CONFIDENTIALITY.** The purpose of the settlement conference is to precipitate settlement of the case if possible, but the settlement conference will be conducted in such a manner as not to prejudice any party in the event settlement is not reached. All matters communicated to the settlement conference judge in confidence will be kept confidential by the judge and will not be disclosed to any other party or to the trial judge. *See* Local Rule 16.3(e). Also, the settlement conference judge ordinarily will not serve as the trial judge in this case.

6. **REQUIREMENTS OF THIS ORDER NOT MET OR SETTLEMENT NOT REASONABLY POSSIBLE.** If, prior to the settlement conference, counsel for any party learns that the requirements of this order will not be met or determines that settlement is not reasonably possible, then such counsel shall initiate a telephone conference with the settlement conference judge (at 712-233-3868) and opposing counsel to discuss whether the settlement conference should be canceled or postponed. Any such telephone conference must be sought soon enough so that the fees and expenses incurred in connection with convening the settlement conference can be avoided (normally, at least two court days before the date scheduled for the settlement conference).

7. **ASSESSMENT OF COSTS AND EXPENSES.** If a party appears at the settlement conference without having complied with the requirements of this order, then the court may cancel the settlement conference and assess against the noncomplying party, attorney, or both, the fees and expenses incurred by the other parties in attending the settlement conference and the expenses incurred by the court in attending the settlement conference.

IT IS SO ORDERED.

DATED July 2, 2002.

UNITED STATES DISTRICT COURT
MAGISTRATE JUDGE
PAUL A. SOSS

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